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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MARK GELAZELA ,
12 Petitioner,
13 v.
14 DOUGLAS WHITE,
15 Respondent.
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No. 1:21-cv-00002-DAD-HBK (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DIMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

(Doc. Nos. 1, 13)

18 Petitioner Mark Gelazela is a federal prisoner proceeding *pro se* and *in forma pauperis*
19 with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) The matter
20 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local
21 Rule 302.

22 On May 27, 2021, the assigned magistrate judge issued findings and recommendations,
23 recommending that the petition be dismissed because conditions of confinement claims are not
24 recognizable claims for habeas relief; challenges to an inmate's location of or length of
25 confinement pursuant to the First Step Act and CARES Act may not be challenged via a § 2241
26 petition; any compassionate release petition pursuant to 18 U.S.C. § 3582(c)(1)(A) must be
27 brought before the petitioner's sentencing court, here the U.S. District Court for the Central
28 District of California; and petitioner failed to exhaust his claims. (Doc. No. 13.) The pending

1 findings and recommendations were served on petitioner with notice that any objections thereto
2 were to be filed within thirty (30) days of service. (*Id.* at 6.) On June 9, 2021, petitioner filed
3 objections to the findings and recommendations. Therein petitioner concedes that his claims for
4 relief are not available through a § 2241 petition, but he requests that his petition be converted
5 into a petition for release to home confinement pursuant to the First Step Act and the CARES
6 Act. (Doc. No. 14 at 1.) Although the legal basis for petitioner’s request is unclear, the CARES
7 Act “‘authorizes the BOP—not courts—to expand the use of home confinement’ under 18 U.S.C.
8 § 3624(c)(2).” *United States v. Fantz*, No. 5:14-cr-32-BR, 2020 WL 3492028, at *1 (E.D.N.C.
9 June 26, 2020) (quoting *United States v. Nash*, No. 19-40022-01-DDC, 2020 WL 1974305, at *2
10 (D. Kan. Apr. 24, 2020) (collecting cases)); *see also United States v. Rice*, No. 12-cr-818-PJH,
11 2020 WL 3402274, at *4 (N.D. Cal. June 19, 2020) (denying a defendant’s request for release to
12 home confinement made in conjunction with his motion for compassionate release because “the
13 court has no authority to designate the place of confinement” because the “Bureau of Prisons has
14 the statutory authority to choose the locations where prisoners serve their sentence.”); *United*
15 *States v. Gray*, No. 4:12-cr-54-FL-1, 2020 WL 1943476, at *3 (E.D.N.C. Apr. 22, 2020) (holding
16 that the CARES Act “does not authorize the court to order defendant’s placement in home
17 confinement”). As the magistrate judge properly concluded, plaintiff’s allegations appear to be
18 more properly presented in either a *Bivens* action or a motion for compassionate release pursuant
19 to 18 U.S.C. § 3582(c)(1)(A), which must be brought before the petitioner’s sentencing court.
20 The court therefore declines plaintiff’s request.

21 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
22 *de novo* review of this case. Having carefully reviewed the entire file, the court concludes that
23 the findings and recommendations are supported by the record and proper analysis.

24 In addition, having concluded that the pending petition must be dismissed, the court now
25 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
26 habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, and an
27 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
28 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds

1 without reaching the underlying constitutional claims, the court should issue a certificate of
2 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
3 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
4 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
5 In the present case, the court finds that reasonable jurists would not find the court’s determination
6 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to
7 proceed further. Therefore, the court declines to issue a certificate of appealability.

8 Accordingly,

- 9 1. The findings and recommendations issued on May 27, 2021 (Doc. No. 13) are
10 adopted in full;
- 11 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 12 3. The court declines to issue a certificate of appealability; and
- 13 4. The Clerk of the Court is directed to close this case.

14 IT IS SO ORDERED.

15 Dated: **July 11, 2021**

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18 UNITED STATES DISTRICT JUDGE
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